

# EXHIBIT 3

## FILED UNDER SEAL

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

RAI STRATEGIC HOLDINGS, :  
INC. and R.J. REYNOLDS :  
VAPOR COMPANY, :  
Plaintiffs/ :  
Counterclaim Defendants, : Case No.  
v. : 1:20-cv-00393-LO-TCB  
ALTRIA CLIENT SERVICES LLC; :  
PHILIP MORRIS USA INC.; and :  
PHILIP MORRIS PRODUCTS S.A., :  
Defendants/ :  
Counterclaim Plaintiffs. :

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VIDEOTAPED DEPOSITION of JAMES FIGLAR, Ph.D.

Friday, June 3, 2022

6:54 a.m. CST

Job No.: 450979

Pages: 1 - 175

Reported By: Michelle M. Yohler, CSR, RMR, CRR

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Transcript of James Figlar, Ph.D.  
Conducted on June 3, 2022

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1	A	That is correct.	07:02:30
2	Q	And who is Mr. Araya?	07:02:30
3	A	He's the executive vice president of	07:02:32
4		marketing for Reynolds in Winston-Salem. So I had	07:02:37
5		a conversation with him to talk about marketing.	07:02:42
6		If you remember, I think one of my earlier	07:02:48
7		depositions you asked me about Reynolds'	07:02:49
8		marketplace strategy and where their projections	07:02:54
9		were and that I knew what the strategic plan was.	07:02:56
10		And think I alluded to that in earlier	07:03:00
11		depositions, and I wanted an update from Jorge on	07:03:03
12		how those -- how the year went when I wasn't	07:03:06
13		there. And so I got that update at that time in	07:03:09
14		early April.	07:03:11
15	Q	Okay. And you also spoke with Mr. Richard	07:03:12
16		Baker [sic]; is that right?	07:03:18
17	A	Bakker, yes, that's correct.	07:03:19
18	Q	Okay. And who is Mr. Bakker?	07:03:21
19	A	He is the CFO of Reynolds American.	07:03:23
20	Q	And just --	07:03:26
21	A	Chief financial officer of Reynolds.	07:03:27
22	Q	And just -- we'll circle back to it, but	07:03:30

1 just generally, what did you talk to Mr. Bakker  
2 about?

3 A I wanted -- I specifically wanted to  
4 understand how -- well, how did the year go for  
5 Reynolds when I was not there in terms of the  
6 overall financials of the company.

7 But then I also was interested in --  
8 because I know one of the strategic objectives we  
9 had was to try to make sure that the vapor  
10 category in total was going to be profitable for  
11 Reynolds, and so we talked about -- we talked  
12 about that and found out that -- and he was quite  
13 happy about it, obviously, that the Vuse portfolio  
14 was turning a profit in 2021 and looks to continue  
15 to do so moving forward.

16 So that's a -- that was great news from my  
17 perspective for the company.

18 Q And you also talked to, it looks like,  
19 Aaron Williams and Elaine Round?

20 A That's correct.

21 Q And those are both related to FDA PMTA  
22 issues; is that right?

07:03:32

07:03:34

07:03:35

07:03:37

07:03:42

07:03:44

07:03:46

07:03:48

07:03:52

07:03:59

07:04:01

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07:04:36

07:04:42

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1	BY MR. NAPLES:	07:30:29
2	Q Did Reynolds make any -- reach any	07:30:29
3	conclusions about whether using its, kind of,	07:30:31
4	surrogate analysis for youth, whether youth are	07:30:36
5	more likely to use menthol than regular tobacco	07:30:41
6	products?	07:30:44
7	MR. QUINLAN: Object to form. Beyond the	07:30:44
8	scope.	07:30:47
9	BY THE WITNESS:	07:30:48
10	A Again, my recollection of the data is the	07:30:49
11	answer to that would be, no, that the likelihood	07:30:53
12	was the same. Especially with regard to people's	07:30:56
13	preferences going into the survey, right? So --	07:30:58
14	BY MR. NAPLES:	07:31:02
15	Q Understood. Let me pause you there for a	07:31:02
16	second, Dr. Figlar.	07:31:04
17	A Okay.	07:31:05
18	Q Did -- did Reynolds reach any conclusions	07:31:05
19	about whether any particular class of people is	07:31:08
20	more likely to use menthol than regular tobacco	07:31:12
21	products?	07:31:16
22	MR. QUINLAN: Object to form. And before	07:31:17

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1	you answer, Dr. Figlar, Mr. Naples, we offered	07:31:19
2	this deposition so that you could learn about the	07:31:23
3	conversations that Dr. Figlar had with his	07:31:25
4	colleagues. This isn't an opportunity for you to	07:31:27
5	ask Dr. Figlar questions you could have asked him	07:31:30
6	at his past two depositions.	07:31:32
7	I'm going to give you leeway. I'm not	07:31:33
8	trying to cut you off. I'm not trying to shut you	07:31:36
9	down. But, as Dr. Figlar said, he's got to get on	07:31:39
10	a plane tomorrow morning. You know, it's 2:00	07:31:42
11	where he is, now 2:30. We're not going to go for	07:31:45
12	eight hours today to have you ask whatever	07:31:48
13	question you feel like you want to ask about	07:31:50
14	whatever topic you feel like you want to ask him	07:31:51
15	about.	07:31:54
16	We offered him up so you can learn about	07:31:54
17	the conversations. I've given you plenty of	07:31:57
18	leeway so far. I just want to note for the record	07:32:00
19	that we're not going to do this all day.	07:32:00
20	Dr. Figlar is not going to stay here until	07:32:03
21	10:00 p.m. his time. He's got to get ready to	07:32:03
22	travel for this trial tomorrow.	07:32:05

1	I just want to note that for the record	07:32:07
2	and objection, beyond the scope.	07:32:11
3	BY THE WITNESS:	07:32:17
4	A Can you -- can you rephrase your question,	07:32:17
5	Counselor.	07:32:17
6	MR. NAPLES: Can I get the question read	07:32:17
7	back, please.	07:32:17
8	(WHEREUPON, the record was	07:32:17
9	read by the reporter.)	07:32:39
10	BY THE WITNESS:	07:32:39
11	A Not that I'm aware of. I mean, we're	07:32:39
12	obviously aware of demographic information with	07:32:41
13	regard to menthol cigarettes, non-menthol	07:32:44
14	cigarettes, vapor products, et cetera, but we	07:32:50
15	don't typically collect that information; that	07:32:54
16	stuff is known in the literature. So --	07:32:56
17	BY MR. NAPLES:	07:32:59
18	Q So, Dr. Figlar, what --	07:32:59
19	MR. QUINLAN: Objection. Objection.	07:33:00
20	Objection. Objection. Mr. Naples, I let you cut	07:33:01
21	him off once. You've now cut him off again. The	07:33:03
22	witness was obviously not finished with his	07:33:06

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1	BY MR. NAPLES:	07:34:54
2	Q But are you aware of any targeted	07:34:54
3	advertising of menthol products to	07:34:57
4	African-Americans by Reynolds?	07:34:59
5	MR. QUINLAN: Object to form. Beyond the	07:35:02
6	scope.	07:35:03
7	BY THE WITNESS:	07:35:05
8	A Currently, no, I don't know -- I don't	07:35:07
9	know of any of that. And I'm not a marketing	07:35:08
10	person, so no.	07:35:11
11	BY MR. NAPLES:	07:35:15
12	Q Historically are you aware of any targeted	07:35:16
13	marketing of menthol products to African-Americans	07:35:18
14	by Reynolds?	07:35:20
15	MR. QUINLAN: Object to form.	07:35:21
16	Mr. Naples, what are we doing here? I	07:35:22
17	mean, we're talking about historical targeted --	07:35:24
18	potential targeted marketing of African-American	07:35:27
19	menthol combustible cigarette smokers?	07:35:31
20	We are so far afield from the topics that	07:35:34
21	Dr. Figlar is going to testify at this trial, that	07:35:36
22	he's been designated as a 30(b)(6) topic on, that	07:35:39



1 are even relevant at all to this litigation. And  
2 this isn't what we offered him up for a  
3 deposition.

4 So, again, I'm not telling you that you  
5 can't ask him questions about the conversations he  
6 had with his colleagues or reasonable follow-ups  
7 about those conversations, but now we're so far  
8 afield, how did we even get here?

9 So, again, I object. We urge you to focus  
10 on the topics that are relevant to this deposition  
11 today. We're not going to do this all day.

12 So that's my objection.

13 MR. NAPLES: Can you read my question  
14 back, please.

15 (WHEREUPON, the record was  
16 read by the reporter.)

17 BY THE WITNESS:

18 A By -- look, by Reynolds, I'm not exactly  
19 sure. Look, we're going back in history, tobacco  
20 litigation history, and smoking and health  
21 litigation stuff. I haven't thought about those  
22 topics in a long time.

07:35:42

07:35:46

07:35:48

07:35:48

07:35:51

07:35:52

07:35:56

07:35:58

07:36:00

07:36:03

07:36:06

07:36:10

07:36:13

07:36:30

07:36:30

07:36:31

07:36:31

07:36:31

07:36:34

07:36:41

07:36:43

07:36:45

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1           MR. QUINLAN: Object to form. Asked and  
2 answered at every depo you've taken of Dr. Figlar,  
3 and it's beyond the scope of this depo.

4 BY THE WITNESS:

5           A I'm not quite -- absent --

6 BY MR. NAPLES:

7           Q FDA --

8           A -- I don't -- I'm not quite sure I  
9 understand how you worded that question.

10           I mean, look, I think at the end of the  
11 day, if the FDA -- either the FDA is going to  
12 authorize the products to continue to be sold or  
13 they're not.

14           If they do, Reynolds is going to continue  
15 to sell Alto. If they do not, then Reynolds  
16 will -- will go through their full process --  
17 okay? -- because they have due process with regard  
18 to, you know, asking for administrative review,  
19 blah, blah, blah, blah. But at the end of the  
20 day, if the FDA still refuses to authorize the  
21 product, they won't be able to sell it in the  
22 United States.

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1	MR. QUINLAN: Object to form. Beyond the	08:02:23
2	scope.	08:02:26
3	BY THE WITNESS:	08:02:26
4	A Again, you're asking me to -- you're	08:02:27
5	asking me to forecast stock prices. If I could do	08:02:29
6	that, you know, I probably would have retired from	08:02:32
7	Reynolds a long time ago.	08:02:34
8	But, you know, honestly, I don't know. I	08:02:35
9	think stock prices for large companies are	08:02:38
10	dependent on a multitude of factors. Could it?	08:02:41
11	It might. I don't know.	08:02:46
12	BY MR. NAPLES:	08:02:48
13	Q Would you consider the Vuse products in	08:02:48
14	this case successful products?	08:02:50
15	MR. QUINLAN: Object to form. Beyond the	08:02:53
16	scope.	08:02:54
17	Dr. Figlar -- you haven't asked a question	08:02:55
18	that's relevant to his conversations with the five	08:03:00
19	individuals, which is why we offered him up for	08:03:02
20	this deposition, in about an hour.	08:03:05
21	So I'm going to start instructing	08:03:06
22	Dr. Figlar not to answer questions unless it's	08:03:08

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1 relevant in some way to his conversations, which

08:03:10

2 is why we offered him up for this deposition.

08:03:13

3 Dr. Figlar has to leave tomorrow for his

08:03:16

4 flight to get here for trial. I'm not going to

08:03:19

5 keep him there until 9:00, 10:00 at night so you

08:03:21

6 can ask him a bunch of questions you could have

08:03:25

7 asked him at his two other depositions.

08:03:27

8 This is a limited deposition that we

08:03:29

9 offered. The judge said you could take a limited

08:03:30

10 deposition on the topics of what did he talk to

08:03:32

11 these five people who he talked to after his

08:03:37

12 deposition from Reynolds.

08:03:39

13 So from now on, every question that you

08:03:40

14 ask that's not even tangentially related to that,

08:03:42

15 I'm going to instruct Dr. Figlar not to answer.

08:03:45

16 MR. NAPLES: Were you at the hearing,

08:03:47

17 Mike?

08:03:49

18 MR. QUINLAN: I was.

08:03:49

19 MR. NAPLES: You were. Were you -- so you

08:03:50

20 were there when the judge said the kind of stuff

08:03:52

21 that Reynolds pulled is the kind of thing that

08:03:53

22 gets people disbarred, right? Were you there for

08:03:57

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1	it out.	08:05:25
2	Please read back the questions, Ms. Court	08:05:25
3	Reporter.	08:05:27
4	(WHEREUPON, the record was	08:05:53
5	read by the reporter.)	08:05:55
6	MR. QUINLAN: Object to form.	08:05:55
7	BY MR. NAPLES:	08:05:57
8	Q You can answer, Doctor.	08:05:57
9	A Yes.	08:05:59
10	Q Why?	08:06:00
11	MR. QUINLAN: Object to form.	08:06:02
12	BY THE WITNESS:	08:06:03
13	A People buy them and use them and enjoy	08:06:05
14	them.	08:06:08
15	BY MR. NAPLES:	08:06:08
16	Q Why are they successful for Reynolds?	08:06:08
17	MR. QUINLAN: Object to form. I instruct	08:06:11
18	Dr. Figlar, don't answer the question. It's	08:06:13
19	beyond the scope. We're not going to do this.	08:06:15
20	You're not going to be here all night.	08:06:17
21	So, Dr. Figlar, I instruct you not to	08:06:19
22	answer.	08:06:21

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1	BY MR. NAPLES:	08:06:22
2	Q You can answer the question, Dr. Figlar.	08:06:22
3	A I've been instructed not to. I usually	08:06:24
4	follow the counsel's --	08:06:27
5	Q You're the -- you're the client here, so	08:06:30
6	you get to do whatever you want. You don't have	08:06:31
7	to take his advice.	08:06:33
8	A Understood. I won't answer this one.	08:06:36
9	Q You're not going to answer if the Vuse	08:06:38
10	products are successful?	08:06:40
11	MR. QUINLAN: He's not going to answer the	08:06:42
12	question because I told him not to because we're	08:06:43
13	so far afield of why we offered this deposition.	08:06:46
14	BY MR. NAPLES:	08:06:46
15	Q How about, let me do it this way:	08:06:50
16	Dr. Figlar, when you retired at the end of	08:06:52
17	December 2020, why, in your view, were the Vuse	08:06:56
18	products successful?	08:07:03
19	A Because they were an alternative to	08:07:06
20	combustible cigarettes that are likely less	08:07:12
21	hazardous than smoking cigarettes. And they were	08:07:15
22	the -- in my opinion, probably one of the best	08:07:17

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1 already know when you left Reynolds at the end of 09:01:14  
2 2020? 09:01:17

3 A Yeah, again, just confirmation of 09:01:17  
4 what -- what I already knew. So I got a little 09:01:19  
5 bit more detail because I asked her, well, you 09:01:22  
6 know, how did -- you know, how did the Vuse Solo 09:01:25  
7 application look? What were -- what were FDA's, 09:01:27  
8 you know, kind of, critiques. 09:01:30

9 The only thing that I -- I guess I didn't 09:01:32  
10 know was, in essence, FDA wants even more 09:01:35  
11 information with regard to non-tobacco flavors. 09:01:38  
12 So you're talking about the berries-type flavors. 09:01:41  
13 It's going to be a significant more -- 09:01:46  
14 significantly more information's going to be 09:01:52  
15 needed before FDA is going to approve -- not 09:01:55  
16 approve -- authorize those types of flavors. 09:01:57

17 And so I kind of knew that going in, but 09:02:01  
18 that was confirmation from my perspective from her 09:02:08  
19 and FDA, you know, through -- through the 09:02:12  
20 application process. 09:02:14

21 Q How did she say the Vuse Solo looked -- 09:02:15  
22 the Vuse Solo application looked? 09:02:19

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1           A   Well, I mean, it's great -- right? -- I           09:02:22  
2           mean, it was authorized.   The tobacco flavors were           09:02:24  
3           authorized.   So I learned through her that they           09:02:26  
4           weren't going to approve menthol because it looks           09:02:29  
5           like it's going to be more of a global-type           09:02:33  
6           decision.           09:02:36

7                   And that the non-tobacco flavors, it           09:02:37  
8           wasn't going to be like what we had in our           09:02:39  
9           application -- right? -- they're going to want           09:02:41  
10          individual data -- you know, even though they           09:02:44  
11          talked about bridging, and we talked about           09:02:46  
12          bridging in our depositions, and the FDA approved           09:02:48  
13          of our -- not approved, but they liked our           09:02:52  
14          bridging strategy going in, but ultimately, it           09:02:55  
15          wasn't enough for them.           09:02:59

16                  So there's going to be a lot more data           09:03:00  
17          that's going to be needed if you have an           09:03:02  
18          expectation to getting a non-tobacco flavor           09:03:04  
19          authorized through the agency.   So I learned that           09:03:06  
20          through her.           09:03:09

21                Q   Okay.   Mr. Araya, same question, can you           09:03:10  
22          just tell me what Mr. Araya told you that you           09:03:17



C E R T I F I C A T E   O F   R E P O R T E R

I, MICHELLE M. YOHLER, a Certified  
Shorthand Reporter within and for the County of  
Will, State of Illinois, do hereby certify:

That previous to the commencement of the  
examination of the witness, the witness was duly  
sworn to testify the whole truth concerning the  
matters herein;

That the foregoing deposition transcript  
was reported stenographically by me, was  
thereafter reduced to typewriting under my  
personal direction and constitutes a true record  
of the testimony given and the proceedings had;

That the said deposition was taken  
remotely before me at the time and place  
specified; revie was not waived.

That I am not a relative or employee or  
attorney or counsel, nor a relative or employee of  
such attorney or counsel for any of the parties  
hereto, nor interested directly or indirectly in  
the outcome of this action.

1           IN WITNESS WHEREOF, I do hereunto set my  
2           hand and affix my seal of office at Chicago,  
3           Illinois, this 3rd day of June, 2022.

4  
5  
6             
7

8           \_\_\_\_\_  
9           Michelle M. Yohler, CSR, RMR, CRR  
10          Certified Shorthand Reporter  
11          CSR No.: 84-4531  
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